

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

NICHOLAS ROLOVICH,

Plaintiff,

v.

WASHINGTON STATE  
UNIVERSITY, an agency of the State  
of Washington; PATRICK CHUN,  
Director of Athletics for Washington  
State University, in his individual  
capacity; and JAY INSLEE,  
Governor, in his official capacity,

Defendants.

NO. 2:22-CV-0319-TOR

ORDER ON MOTIONS TO DISMISS

BEFORE THE COURT are Defendants' Motions to Dismiss (ECF Nos. 21, 22). These matters were submitted for consideration with oral argument on May 11, 2023. Brian Fahling and Eric Job Seese appeared on behalf of Plaintiff. Cristina Sepe appeared on behalf of Defendant Inslee. Zachary J. Pekelis and Spencer W. Coates appeared on behalf of Defendants Washington State University

1 and Patrick Chun. The Court has reviewed the record and files herein, considered  
2 the parties' oral arguments, and is fully informed. For the reasons discussed  
3 below, Defendant Inslee's Motion to Dismiss (ECF No. 21) is **GRANTED**.  
4 Defendants Washington State University and Chun's Motion to Dismiss (ECF No.  
5 22) is **GRANTED in part and DENIED in part**.

### 6 **BACKGROUND**

7 This matter relates to the termination of Plaintiff's employment from  
8 Washington State University ("WSU") following the determination that Plaintiff's  
9 religious exemption from the COVID-19 vaccine could not be accommodated.  
10 ECF No. 1-1. The following facts are drawn from Plaintiff's Amended Complaint  
11 and construed in a light most favorable to Plaintiff. *Shwarz v. United States*, 234  
12 F.3d 428, 436 (9th Cir. 2000).

13 Plaintiff Nicholas Rolovich was the head football coach for WSU from  
14 January 14, 2020 until he was terminated on December 6, 2021. ECF No. 1-1 at  
15 75, ¶ 11. WSU is an agency of the State of Washington, located in Pullman,  
16 Washington. *Id.*, ¶ 12. Defendant Patrick Chun is the Athletics Director for WSU.  
17 *Id.*, ¶ 13. Plaintiff and WSU entered an employment contract on January 13, 2020.  
18 *Id.*, ¶ 16. The contract was due to expire on June 30, 2025. *Id.* The contract  
19 provides that WSU could terminate Plaintiff's employment at any time without just  
20 cause, but such termination would trigger a liquidated damages provision, entitling

1 Plaintiff to “liquidated damages in an amount equal to sixty percent (60%) of the  
2 remaining base salary due under the terms of the Agreement.” *Id.*, ¶ 17. The  
3 contract also provided that WSU could terminate Plaintiff’s employment at any  
4 time for just cause if Plaintiff was found to be in violation of the just cause  
5 provisions. *Id.*, ¶ 18.

6 Beginning on or around May 24, 2021, Plaintiff indicated to Chun he was  
7 not planning to receive a COVID-19 vaccine. *Id.* at 79, ¶ 31. On August 16, 2021,  
8 Chun informed Plaintiff that Governor Inslee was planning to issue a vaccine  
9 mandate, which would have a high threshold for religious exemption requests. *Id.*  
10 at 80, ¶ 34. At the time, WSU permitted its employees to refuse vaccination for  
11 personal/religious reasons. *Id.* at 79–80, ¶ 33. Chun indicated the Governor’s  
12 mandate would eliminate the personal exemption option. *Id.* at 80, ¶ 34. Chun  
13 further informed Plaintiff he would be terminated with cause on October 19, 2021  
14 if he did not get vaccinated. *Id.*, ¶ 35.

15 On August 19, 2021, Chun called Plaintiff to a meeting. *Id.* at 81, ¶ 38.  
16 During what was apparently a heated exchange, Chun pressed Plaintiff about his  
17 reasons for not getting vaccinated to which Plaintiff responded he was not  
18 comfortable discussing his reasons, citing privacy concerns. *Id.*, ¶ 39. Plaintiff  
19 then inquired about obtaining a religious exemption under WSU’s policies. *Id.* at  
20 82–83, ¶¶ 42–47.

1       The Governor issued Proclamation 21-14 on August 20, 2021, which  
2 required all applicable state employees to get fully vaccinated by October 18,  
3 2021. *Id.* at 83, ¶ 48. Thereafter, WSU established a new process for employee  
4 exemption requests. *Id.* at 86, ¶ 59. The process entailed a two-step blind review.  
5 *Id.* at 87, ¶ 61. At the first step, the employee's exemption application was  
6 reviewed by a committee who did not know the employee's identity. *Id.* If the  
7 exemption was approved, the request moved to the second step where a  
8 determination was made regarding the employee's ability to safely perform the  
9 duties of his or her job without risking the health and safety of the community. *Id.*  
10 As the process applied to Plaintiff, if his exemption application was approved, his  
11 identity would be disclosed by Human Resources ("HR"), who would then send  
12 the exemption request to Plaintiff's supervisor to make the accommodation  
13 determination. *Id.*, ¶ 62. Plaintiff's supervisor was Defendant Chun.

14       Plaintiff submitted his exemption request application on September 28,  
15 2021. *Id.* at 88. ¶ 63. On October 6, 2021, HR notified Chun that it was  
16 considering approval of Plaintiff's exemption request and Chun would need to  
17 determine whether the Athletics Department would be able to accommodate the  
18 exemption request. *Id.*, ¶ 65. Chun responded on October 13, 2021 with two  
19 memoranda. *Id.*, ¶ 66. In the first, Chun indicated the Athletics Department would  
20 not be able to accommodate Plaintiff's exemption. *Id.*, ¶ 67. The second memo

1 expressed concerns about Plaintiff’s claimed religious beliefs. *Id.* On October 14,  
2 2021, WSU’s Department of Environmental Health and Safety (“EH&S”)  
3 responded to Chun’s memos, detailing the proposed accommodations for  
4 Plaintiff’s exemption. *Id.* at 89, ¶ 68. Chun rejected the proposed  
5 accommodations, stating the accommodations would create an undue hardship.  
6 *Id.*, ¶ 70.

7 On October 18, 2021, HR notified Plaintiff that his religious exemption  
8 request would not be approved. *Id.* at 94–95, ¶ 91. The notice indicated there  
9 were questions about the timing of Plaintiff’s asserted religious beliefs and that  
10 Plaintiff’s accommodations would create an undue hardship to WSU. *Id.* at 94, ¶¶  
11 91–92. That same day, Plaintiff received a Notice of Intent to Terminate with Just  
12 Cause from Chun. *Id.*, ¶ 93. Plaintiff appealed the termination to WSU President  
13 Schulz in accordance with the procedures outlined in his employment contract. *Id.*  
14 at 74, ¶ 5. President Schulz ultimately denied the appeal, which became the final  
15 decision of WSU, on December 6, 2021. *Id.*

16 On or about February 14, 2022, Plaintiff filed a complaint with the EEOC  
17 and received a right to sue letter on August 16, 2022. *Id.* at 74–75, ¶¶ 6–7.  
18 Plaintiff filed a Complaint in Superior Court in Whitman County, Washington on  
19 November 14, 2022, raising eight causes. *Id.* at 26–33, ¶¶ 95–149. Six causes of  
20 action related to religious discrimination under state and federal law (Counts II, III,

1 and V–VIII), one cause of action alleged state wage law violations (Count IV), and  
2 the final cause of action alleged common law breach of contract (Count I). *Id.*  
3 The Complaint was never served on Defendants. ECF No. 1 at 2, ¶ 1 n.1.

4 Plaintiff served an Amended Complaint and Summons with Defendants on  
5 December 9, 2022. *Id.*, ¶ 2. The Amended Complaint raises seven of the eight  
6 original causes of action; Plaintiff abandoned the state wage law claim. ECF No.  
7 1-1. Defendants removed the action to this Court on December 14, 2022 pursuant  
8 to 28 U.S.C. §§ 1331, 1332. ECF No. 1 at 2–3, ¶¶ 3–4. In the present motions,  
9 Defendants Inslee, Chun, and WSU seek dismissal of all claims asserted against  
10 them. ECF Nos. 21, 22. Plaintiff does not oppose dismissal of Defendant Inslee or  
11 dismissal of Counts III, VI, and VII asserted against Defendants WSU and Chun.  
12 ECF No. 28 at 8 n.1. Accordingly, the Court will address only Counts I, II, IV,  
13 and V as alleged against Defendants WSU and Chun.

## 14 DISCUSSION

### 15 I. Legal Standard

16 Federal Rule of Civil Procedure 12(b)(6) provides that a defendant may  
17 move to dismiss the complaint for “failure to state a claim upon which relief can be  
18 granted.” A 12(b)(6) motion will be denied if the plaintiff alleges “sufficient  
19 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its  
20 face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*

1 *Twombly*, 550 U.S. 544, 570 (2007)). While the plaintiff’s “allegations of material  
2 fact are taken as true and construed in the light most favorable to the plaintiff” the  
3 plaintiff cannot rely on “conclusory allegations of law and unwarranted inferences  
4 ... to defeat a motion to dismiss for failure to state a claim.” *In re Stac Elecs. Sec.*  
5 *Litig.*, 89 F.3d 1399, 1403 (9th Cir. 1996) (citation and brackets omitted). That is,  
6 the plaintiff must provide “more than labels and conclusions, and a formulaic  
7 recitation of the elements.” *Twombly*, 550 U.S. at 555.

8 When deciding, the Court’s review is limited to the complaint, documents  
9 incorporated into the complaint by reference, and judicial notice. *Metzler Inv.*  
10 *GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008).

11 **A. Title VII, 42 U.S.C. § 2000e, et seq. (Count IV)**

12 Plaintiff clarified at oral argument that he is pursuing Count IV only as to  
13 Defendant WSU. Defendant seeks dismissal of the claim, arguing Plaintiff has not  
14 adequately pleaded a religious-based objection to the COVID-19 vaccine. ECF  
15 No. 22 at 25. Plaintiff argues the determination of whether his objections were  
16 religious based is a sincerity inquiry, which is inappropriate on a motion to  
17 dismiss. ECF No. 28 at 21.

18 Section 703(a)(1) of Title VII of the Civil Rights Act of 1964 provides in  
19 relevant part:

20 It shall be an unlawful employment practice for an employer . . . to  
discharge any individual, or otherwise to discriminate against any

1 individual with respect to his compensation, terms, conditions, or  
2 privileges of employment, because of such individual's race, color,  
religion . . . or national origin. . . .

3 42 U.S.C. § 2000e–2(a). Title VII claims for a failure to accommodate are  
4 analyzed under a burden-shifting framework. *Bolden-Hardge v. Off. of California*  
5 *State Controller*, 63 F.4th 1215, 1222 (9th Cir. 2023). First, a plaintiff must  
6 establish a prima facie case of failure to accommodate. *Id.* If the plaintiff is  
7 successful, the burden shifts to the defendant to show “it was nonetheless justified  
8 in not accommodating the employee’s religious beliefs or practices.” *Id.*

9 To plead a prima facie case based on a failure-to-accommodate theory, the  
10 plaintiff must allege the following: (1) he had a bona fide religious belief, the  
11 practice of which conflicts with an employment duty; (2) he informed his employer  
12 of the belief and conflict; and (3) “the employer threatened him with or subjected  
13 him to discriminatory treatment, including discharge, because of his inability to  
14 fulfill the job requirements.” *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir.  
15 1993).

16 Defendant does not challenge the sincerity of Plaintiff’s beliefs; rather,  
17 Defendant challenges the sufficiency of Plaintiff’s pleadings with regard to the  
18 alleged conflict between his employment requirements and his religious beliefs.  
19 ECF Nos. 22 at 28; 31 at 9. Plaintiff’s Complaint states that he is a practicing  
20 Catholic and his “study of the Bible, personal prayer, . . . advice from a Catholic



1 priest, and the teachings of the Church . . . precluded him from receiving any  
2 available COVID-19 vaccine.” ECF No. 1-1 at 78–79, ¶¶ 25, 29; *see also id.* at 99,  
3 ¶ 121.

4 Both the Ninth Circuit and the Supreme Court have cautioned against  
5 second-guessing the reasonableness of an individual’s asserted religious beliefs.  
6 *Bolden-Hardge*, 63 F.4th at 1223; *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S.  
7 682, 725 (2014) (citation omitted). While a court need not accept at face value a  
8 plaintiff’s conclusory assertions of violations of religious beliefs, “the burden to  
9 allege a conflict with religious beliefs is fairly minimal.” *Bolden-Hardge*, 63 F.4th  
10 at 1223. Plaintiff’s claim that his Catholic faith informed his decision not to  
11 receive the COVID-19 vaccine is sufficient at the pleading stage to meet the prima  
12 facie element that he has a bona fide religious belief. Further, because  
13 Proclamation 21-14 imposed vaccination as a condition of employment for certain  
14 state employees, a religious-based objection to vaccination is sufficient to allege a  
15 conflict with employment duties. Taken together, Plaintiff has adequately pleaded  
16 the first element of the prima facie case for a failure to accommodate claim.  
17 Defendant does not challenge the remaining elements of Plaintiff’s prima facie  
18 case.

19 After a plaintiff has established a prima facie case, the burden shifts to the  
20 defendant to demonstrate “either that it initiated good faith efforts to accommodate

1 reasonably the employee’s religious practices or that it could not reasonably  
2 accommodate the employee without undue hardship.” *Sutton v. Providence St.*  
3 *Joseph Med. Ctr.*, 192 F.3d 826, 830 (9th Cir. 1999) (citation omitted). Undue  
4 hardship is an affirmative defense. *Bolden-Hardge*, 63 F.4d at 1224. “What  
5 constitutes undue hardship must be determined within the particular factual context  
6 of each case.” *Balint v. Carson City, Nev.*, 180 F.3d 1047, 1054 (9th Cir. 1999).  
7 An accommodation may result in an undue hardship if there is “more than a de  
8 minimis cost to the employer . . . [or] more than a de minimis impact on  
9 coworkers.” *Id.* The assertion of an undue hardship may not be premised on  
10 hypothetical or speculative hardships; there must be actual imposition or  
11 disruption. *Tooley v. Martin-Marietta Corp.*, 648 F.2d 1238, 1243 (9th Cir. 1981).  
12 Dismissal premised on undue hardship is proper “only if the defendant shows some  
13 obvious bar to securing relief on the face of the complaint or in any judicially  
14 noticeable materials.” *Bolden-Hardge*, 63 F.4d at 1224 (citation and internal  
15 quotations omitted).

16 Defendant asserts that Plaintiff’s accommodation request would have  
17 resulted in increased travel costs, harm to recruitment and fundraising efforts, and  
18 damage to WSU’s reputation and donor commitments, in addition to an increased  
19 risk of exposure to COVID-19 to student athletes and other coaching staff. ECF  
20 No. 22 at 26. To a degree, these hardships are reflected in Plaintiff’s Complaint.

1 For example, Plaintiff cites a memo from WSU’s Department of Athletics,  
2 indicating WSU had “already lost significant donor commitments who have  
3 withdrawn or withheld donations based on the vaccination decisions of the football  
4 staff,” and the remote attendance at a media day “became a major story and  
5 embarrassment to WSU” and also caused “significant decline in attendance.” ECF  
6 No. 1-1 at 89, ¶ 70. The memo also indicated “many media stories concerning the  
7 Football Program revolve around the unvaccinated status of the head coach (and  
8 assistant coaches)” and “[t]he damage to the mission and reputation of the  
9 University posed by this situation cannot be understated [sic], nor can it be  
10 resolved by accommodation.” *Id.* at 89–90, ¶ 70.

11 While these claims of undue hardship may be supported by evidence not  
12 presently before the Court, they are insufficient on their own to support a finding  
13 that Plaintiff’s accommodation would have imposed an undue hardship. Defendant  
14 does not cite to any other facts or evidence referenced by the pleadings that would  
15 constitute “some obvious bar to securing relief on the face of the complaint.”  
16 *Bolden-Hardge*, 63 F.4d at 1224. Defendant’s claimed undue hardship is better  
17 reserved for summary judgment. The Court finds Plaintiff has adequately stated a  
18 claim for failure to accommodate in violation of Title VII.

19 //

20 //

1           **B. WLAD (Count II)**

2           Count II is also alleged only against Defendant WSU. The requirements to  
3 state a claim for a failure to accommodate under the WLAD are substantially  
4 similar to those under Title VII. *See Kumar v. Gate Gourmet Inc.*, 180 Wash. 2d  
5 481 (2014). Accordingly, Plaintiff has plausibly alleged a failure to accommodate  
6 under WLAD.

7           **C. Section 1983 (Count V)**

8           Count V is asserted against Defendant Chun. Plaintiff alleges Chun violated  
9 his free exercise of religion rights under the First Amendment and his due process  
10 rights under the Fourteenth Amendment. ECF No. 1-1 at 100–01, ¶¶ 130–39.  
11 Defendant moves for dismissal of the claim on the grounds that Plaintiff has not  
12 alleged specific conduct necessary to plead a Section 1983 claim and because  
13 Defendant Chun is entitled to qualified immunity. ECF No. 22 at 36–37.  
14 Although Plaintiff purports to bring the claim against Defendant Chun in his  
15 individual capacity, the cause of action clearly states “[a]ll of the acts of Defendant  
16 Chun were conducted by him under color and pretense of the statutes, regulations,  
17 customs, policies and/or usages of the State of Washington and Washington State  
18 University.” ECF No. 1-1 at 100, ¶ 131; at 75, ¶ 13. Accordingly, the Court will  
19 evaluate Plaintiff’s claim asserted against Defendant Chun in his official capacity.  
20

1 A section 1983 cause of action may be maintained “against any person  
2 acting under color of law who deprives another ‘of any rights, privileges, or  
3 immunities secured by the Constitution and laws’ of the United States.” *S. Cal.*  
4 *Gas Co. v. City of Santa Ana*, 336 F.3d 885, 887 (9th Cir. 2003) (quoting 42 U.S.C.  
5 § 1983). The rights guaranteed by section 1983 are “liberally and beneficently  
6 construed.” *Dennis v. Higgins*, 498 U.S. 439, 443 (1991) (quoting *Monell v. N.Y.*  
7 *City Dep’t of Soc. Servs.*, 436 U.S. 658, 684 (1978)).

8 Section 1983 requires a claimant to prove “(1) that a person acting under  
9 color of state law committed the conduct at issue, and (2) that the conduct deprived  
10 the claimant of some right, privilege, or immunity protected by the Constitution or  
11 laws of the United States.” *Leer v. Murphy*, 844 F.2d 628, 632–33 (9th Cir. 1988).  
12 “A person deprives another ‘of a constitutional right, within the meaning of section  
13 1983, if he does an affirmative act, participates in another’s affirmative acts, or  
14 omits to perform an act which he is legally required to do that causes the  
15 deprivation of which the plaintiff complains.” *Id.* at 633 (brackets and citation  
16 omitted). “In order for a person acting under color of state law to be liable under  
17 section 1983 there must be a showing of personal participation in the alleged rights  
18 deprivation: there is no *respondeat superior* liability under section 1983.” *Jones v.*  
19 *Williams*, 297 F.3d 930, 934 (9th Cir. 2002) (citation omitted). Moreover, the  
20 “inquiry into causation must be individualized and focus on the duties and

1 responsibilities of each individual defendant whose acts or omissions are alleged to  
2 have caused a constitutional deprivation.” *Leer*, 844 F.2d at 632–33.

3 Defendants do not dispute that Chun was acting under the color of state law.  
4 Therefore, the claim turns on the second inquiry: whether Chun violated Plaintiff’s  
5 constitutional rights.

6 *1. Qualified Immunity*

7 Qualified immunity shields government actors from civil damages unless  
8 their conduct violates “clearly established statutory or constitutional rights of  
9 which a reasonable person would have known.” *Pearson v. Callahan*, 555 U.S.  
10 223, 231 (2009) (citation omitted). “Qualified immunity balances two important  
11 interests—the need to hold public officials accountable when they exercise power  
12 irresponsibly and the need to shield officials from harassment, distraction, and  
13 liability when they perform their duties reasonably.” *Id.* In evaluating a state  
14 actor’s qualified immunity assertion, a court must determine (1) whether the facts,  
15 viewed in the light most favorable to the plaintiff, show that the defendant’s  
16 conduct violated a constitutional right; and (2) whether the right was clearly  
17 established at the time of the alleged violation such that a reasonable person in the  
18 defendant’s position would have understood that his actions violated that right.  
19 *Saucier v. Katz*, 533 U.S. 194, 201 (2001), *overruled in part by Pearson*, 555 U.S.  
20 at 227.

1 A court may, within its discretion, decide which of the two prongs should be  
2 addressed first in light of the particular circumstances of the case. *Pearson*, 555  
3 U.S. at 236. If the answer to either inquiry is “no,” then the defendant is entitled to  
4 qualified immunity and may not be held personally liable for his or her conduct.  
5 *Glenn v. Wash. Cnty.*, 673 F.3d 864, 870 (9th Cir. 2011).

6 a. Free Exercise of Religion

7 Defendant argues Plaintiff has failed to allege any facts to support his claim  
8 that Chun violated his free exercise rights under the First Amendment. ECF No.  
9 22 at 38. The Court agrees it is not evident from the cause of action what conduct  
10 Chun undertook to violate Plaintiff’s First Amendment rights; the cause of action  
11 merely outlines the elements of a Section 1983 claim. ECF No. 1-1 at 100–01, ¶¶  
12 132, 134, 138. Pleadings that offer only a “formulaic recitation of the elements of  
13 a cause of action” are insufficient to meet the requirements of Rule 8. *Iqbal*, 556  
14 U.S. at 678 (citation omitted). However, because all material facts are taken as  
15 true and viewed in a light most favorable to Plaintiff on a Rule 12(b)(6) motion,  
16 the Court will read beyond the cause of action to determine if Plaintiff has alleged  
17 any facts to support the claim.

18 To state a claim under the Free Exercise Clause, a plaintiff must show the  
19 challenged government action “substantially burdens a religious practice and either  
20 is not justified by a substantial state interest or is not narrowly tailored to achieve

1 that interest.” *Sabra v. Maricopa Cnty. Cmty. Coll. Dist.*, 44 F.4th 867, 890 (9th  
2 Cir. 2022). “A substantial burden . . . place[s] more than an inconvenience on  
3 religious exercise; it must have a tendency to coerce individuals into acting  
4 contrary to their religious beliefs or exert substantial pressure on an adherent to  
5 modify his behavior and to violate his beliefs.” *Jones*, 791 F.3d at 1031–32.  
6 Notably, “the right of free exercise does not relieve an individual of the obligation  
7 to comply with a ‘valid and neutral law of general applicability on the ground that  
8 the law proscribes (or prescribes) conduct that his religion prescribes (or  
9 proscribes).” *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1180 (9th Cir.  
10 2021), *reconsideration en banc denied*, 22 F.4th 1099 (9th Cir. 2022) (citation  
11 omitted).

12 Plaintiff argues the pleaded facts allow the Court to infer Chun violated  
13 Plaintiff’s free exercise rights by attempting to coerce Plaintiff to get vaccinated,  
14 then compelling WSU to overturn its determination that Plaintiff was entitled to a  
15 religious exemption, which then led to WSU’s termination of Plaintiff’s  
16 employment because of his religious beliefs. ECF No. 28 at 23. According to the  
17 pleadings, the earliest Plaintiff revealed to Chun that he had any sort of religious  
18 beliefs was during a meeting on August 19, 2021. ECF No. 1-1 at 81, ¶ 39.  
19 Plaintiff admits he had not previously disclosed having religious beliefs, claiming  
20 his faith was “a very personal matter” and he was not comfortable discussing it



1 with his supervisor. *Id.* at 82, ¶ 41. Consequently, any allegations of coercion  
2 prior to that date cannot support a free exercise claim because it was not evident  
3 that Plaintiff possessed religious beliefs.

4 During the August 19, 2021 meeting, Plaintiff initially declined to discuss  
5 his reasons for not getting vaccinated, citing privacy concerns. *Id.* at 81, ¶ 39. The  
6 discussion became heated and Chun allegedly informed Plaintiff he had two  
7 choices: get vaccinated or resign. *Id.*, ¶ 40. After Chun indicated Plaintiff's  
8 employment would be terminated for failing to get vaccinated, Plaintiff asked  
9 generally about WSU's religious exemption process. *Id.*, ¶ 42. The discussion that  
10 followed appears to have revolved around Plaintiff's plan to apply for a religious  
11 exemption. *Id.*, ¶¶ 43–47. Notably, it is unclear from the pleadings whether  
12 Plaintiff explicitly revealed his religious-based reasons for not getting vaccinated,  
13 or merely hinted at them through his expressed desire for a religious-based  
14 exemption.

15 The Court is unable to infer from these facts that Chun “coerced” Plaintiff  
16 into getting vaccinated. Even if Chun personally disagreed with Plaintiff's reasons  
17 for not getting vaccinated and urged Plaintiff to comply with the Proclamation, his  
18 actions do not rise to a constitutional violation. First, the vaccination requirement  
19 was promulgated by the governor's Proclamation, which specified that any  
20 applicable employee who failed to receive the vaccination or an exemption by the

1 stated deadline would not be permitted to continue their employment with the  
2 State. Chun's repeated statements to Plaintiff that his employment would be  
3 terminated with just cause for failing to comply with the vaccination requirements  
4 were in accord with the Proclamation. *Id.* at 80–81, ¶¶ 35, 38, 40. This Court and  
5 many others around the country have consistently found COVID-19 vaccine  
6 mandates for state employees are facially neutral and generally applicable, and  
7 terminating an employee for failing to comply with a vaccine mandate is a  
8 permissible employment action. *See, e.g., Does 1-6 v. Mills*, 566 F. Supp. 3d 34,  
9 48 (D. Me.), *aff'd*, 16 F.4th 20 (1st Cir. 2021), *cert. denied sub nom. Does 1-3 v.*  
10 *Mills*, 142 S. Ct. 1112 (2022); *Wise v. Inslee*, No. 2:21-CV-0288-TOR, 2021 WL  
11 4951571, at \*2 (E.D. Wash. Oct. 25, 2021); *Pilz v. Inslee*, No. 3:21-CV-05735-  
12 BJR, 2022 WL 1719172, at \*3 (W.D. Wash. May 27, 2022).

13 Second, there is no indication Chun told Plaintiff he could not apply for a  
14 religious exemption or undertook actions to prevent Plaintiff from applying for the  
15 exemption. Even taking Plaintiff's allegations of Chun's hostility as true, the facts  
16 do not demonstrate Chun undertook actions to substantially burden Plaintiff's  
17 practice of religion. Mere hostility is insufficient to demonstrate the level of  
18 coercion necessary to maintain a Section 1983 claim for free exercise violation.  
19 *See Grove v. Mead Sch. Dist. No. 354*, 753 F.2d 1528, 1543 (9th Cir. 1985)  
20 (Canby, J., concurring) (“[G]overnmental actions that merely offend . . . religious

1 beliefs do not on that account violate free exercise. An actual burden on the . . .  
2 exercise of religion is required.”).

3 Turning to Plaintiff’s claim that Chun “compelled” WSU to reverse its  
4 decision regarding Plaintiff’s religious exemption, there are no facts indicating  
5 Chun acted impermissibly. First, by Plaintiff’s own pleadings, Chun’s  
6 participation in the review process was required by WSU’s policies. ECF No. 1-1  
7 at 88, ¶ 65. The pleadings also indicate Chun followed the prescribed policies to  
8 determine whether Plaintiff’s proposed exemption and accommodations would  
9 allow him to fulfill his job duties while ensuring the safety of the community and  
10 those around him. *Id.*, ¶¶ 69–70.

11 Next, Plaintiff alleges Chun improperly expressed concern regarding  
12 Plaintiff’s sincerely held religious beliefs. ECF No. 23 at 33. However, the letter  
13 from HR regarding Plaintiff’s exemption request indicated Plaintiff’s supervisor  
14 was required to contact HR to let them know if: (1) there were no concerns about  
15 the request; (2) the request could not be accommodated; (3) the request could be  
16 accommodated but additional measures were necessary; and/or (4), the supervisor  
17 had questions or would like to meet to discuss further. *Id.* at 27. Accordingly, any  
18 concerns or reservations expressed by Chun to WSU were within the scope of the  
19 exemption review process. There are no facts indicating Chun “compelled” WSU  
20 to overturn its exemption and accommodation determination.

1 Finally, there are no facts to support Plaintiff's claim he was terminated  
2 because of his religious views. As the exemption determination letter indicates,  
3 Plaintiff's employment was terminated for failing to comply with the  
4 Proclamation. *Id.* at 48. Moreover, the final determination regarding Plaintiff's  
5 employment was not made by Chun, it was made by the university President on  
6 behalf of WSU. *Id.* at 62–64.

7 Viewing the facts in the Amended Complaint in a light most favorable to  
8 Plaintiff, the Court is unable to infer Chun substantially burdened Plaintiff's ability  
9 to freely exercise his religion. While the Ninth Circuit has cautioned that resolving  
10 claims of qualified immunity at the motion-to-dismiss stage can “sometimes  
11 present special problems for legal decision making,” particularly where the court is  
12 aided only by the facts contained in the complaint, a Rule 12(b)(6) dismissal may  
13 be appropriate if the court can determine, based on the complaint itself, that  
14 qualified immunity applies. *Sabra v. Maricopa Cnty. Cmty. Coll. Dist.*, 44 F.4th  
15 867, 893 (9th Cir. 2022).

16 Here, Plaintiff has alleged facts that demonstrate Chun participated in the  
17 exemption review process, as required by WSU, and that Chun's actions during the  
18 review process, even his questions regarding the sincerity of Plaintiff's religious  
19 beliefs, were permissible under the process. Even viewing the alleged facts in the  
20 light most favorable to Plaintiff, the Court is unable to conceive of any additional

1 facts that would deprive Chun of immunity, particularly given the Court's  
2 familiarity with the Proclamation and its applicability to state employees. *See*  
3 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 701 (9th Cir. 1988).

4 Accordingly, the Court concludes it is evident from the Amended Complaint  
5 that Chun is entitled to qualified immunity with regard to Plaintiff's Section 1983  
6 claim alleging violation of free exercise of religion. The Court further determines  
7 amendment would be futile, particularly where Plaintiff has already amended his  
8 complaint once and has had ample opportunity to plead additional facts to clarify  
9 his causes of actions. *United States v. Corinthian Colls.*, 655 F.3d 984, 995 (9th  
10 Cir. 2011). Permitting Plaintiff additional opportunities to amend would create  
11 undue delay and prejudice to Defendant.

12 b. Due Process

13 Defendant similarly argues that Plaintiff fails to allege a viable due process  
14 claim and even if he did, Chun is entitled to qualified immunity. ECF No. 22 at  
15 40. Plaintiff claims to hold a constitutionally protected property interest in the  
16 liquidated damages provision of his employment contract and the continuation of  
17 his employment. ECF No. 28 at 24–25. As with Plaintiff's free exercise claim, it  
18 is not clear from the cause of action what facts support this claim; Plaintiff merely  
19 states the elements of the claim, which is insufficient under Rule 8. ECF No. 1-1  
20 at 100–01, ¶¶ 133, 136, 137; *Iqbal*, 556 U.S. at 678 (citation omitted). Plaintiff's

1 Response clarifies his claim is premised on Chun’s “disruption and violation of  
2 WSU’s blind review process.” ECF No. 28 at 24. The Court will consider the  
3 facts outside the cause of action to determine if Plaintiff’s claim is viable.

4 Under the Fourteenth Amendment, “[a] procedural due process claim has  
5 two distinct elements: (1) a deprivation of a constitutionally protected liberty or  
6 property interest, and (2) a denial of adequate procedural protections.” *Brewster v.*  
7 *Bd. of Educ. Of Lynwood Unified Sch. Dist.*, 149 F.3d 971, 982 (9th Cir. 1998).  
8 Property interests “are created and their dimensions defined by existing rules or  
9 understandings that stem from an independent source such as state law—rules or  
10 understandings that secure certain benefits and that support claims of entitlement to  
11 those benefits.” *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972).  
12 “To have a property interest in a benefit, a person clearly must have more than an  
13 abstract need or desire for it. He must have more than a unilateral expectation of  
14 it. He must, instead, have a legitimate claim of entitlement to it.” *Id.*; *Crawford v.*  
15 *Antonio B. Won Pat Int’l Airport Auth.*, 917 F.3d 1081, 1090 (9th Cir. 2019)  
16 (citations omitted).

17 Plaintiff appears to assert that state contract law provides entitlement to his  
18 claimed property interests. ECF No. 28 at 23–24. Nonetheless, Plaintiff does not  
19 plead any facts from which the Court could infer Chun interfered with the blind  
20 review process to deprive Plaintiff of his property interests. Beginning with

1 Plaintiff's property interest in his continued employment, as previously discussed,  
2 Chun's participation in the review process was not only permissible but necessary  
3 according to WSU's policies. Under the blind review process, all employee  
4 religious exemption requests were submitted to a review committee that evaluated  
5 the requests without knowing the identity of the requesting individual. ECF No. 1-  
6 1 at 87, ¶ 61. If an exemption was considered for approval, the request moved to  
7 an accommodation review where a determination was made as to whether an  
8 employee could perform their job duties without risking the health and safety of  
9 the community. *Id.* The process as it pertained to Plaintiff was clarified by WSU  
10 Vice President for Communications, who indicated Plaintiff's blind request, if  
11 approved, would be sent to HR, which would identify the employee in question  
12 and send an email to Plaintiff's supervisor. *Id.*, ¶ 62. The supervisor would then  
13 determine whether Plaintiff could effectively perform his job while keeping the  
14 community safe. *Id.*

15 In accordance with the review process, Plaintiff submitted his exemption  
16 request on September 28, 2021. *Id.* at 88, ¶ 63. On October 6, 2021, following the  
17 blind review portion of the process, HR notified Chun that Plaintiff was entitled to  
18 a religious exemption. *Id.*, ¶ 64. HR provided a list of proposed accommodations  
19 that included masking, social distancing, and testing. *Id.*, ¶ 65. HR indicated the  
20 Athletics Department would need to determine whether it could accommodate the

1 exemption request. *Id.* On October 13, 2021, Chun, on behalf of the Athletic  
2 Department, indicated the department could not accommodate the request. *Id.*, ¶  
3 66. Chun challenged the determination that Plaintiff was entitled to a religious  
4 accommodation and urged the committee to reevaluate Plaintiff's claimed religious  
5 beliefs. *Id.* at 89, ¶ 67. Chun received a response from the Department of  
6 Environmental Health and Safety on October 14, 2021 detailing the exemption  
7 request evaluation process and outlining the proposed accommodations. *Id.*, ¶ 68.  
8 Chun then rejected the proposed accommodations, stating the accommodations  
9 would not ensure Plaintiff's safety or the safety of others with whom Plaintiff  
10 would come into contact. *Id.*, ¶ 70. Chun also indicated the accommodation  
11 would impose an undue hardship, citing loss of donor commitments, poor  
12 attendance at press conferences, and reputational damage to WSU. *Id.*

13 On October 18, 2021, Plaintiff received an email from HR stating WSU had  
14 determined his exemption request would not be approved. *Id.* at 94, ¶ 90. Plaintiff  
15 was then provided a Notice of Intent to Terminate with Just Cause. *Id.* at 95, ¶ 93.

16 These facts do not support Plaintiff's claim that Chun impermissibly  
17 interfered in the exemption review process. Chun participated as required under  
18 the prescribed procedures, and his determination regarding Plaintiff's requested  
19 exemption and accommodations was also in accordance with the procedures.  
20 Moreover, Chun did not make the final determination regarding Plaintiff's



1 employment. As indicated by Plaintiff's employment agreement and the Decision  
2 on Appeal of Termination for Just Cause letter, President Schulz made the final  
3 determination, which constituted the final decision of WSU. ECF Nos. 23 at 64; 1-  
4 1 at 42. The Court is unable to infer Chun impermissibly interfered with the  
5 review process, thereby depriving Plaintiff of his property interest in his continued  
6 employment.

7 As to Plaintiff's claimed property interest in the liquidated damages  
8 provision of his contract, the plain language of the employment contract stipulates  
9 that the liquidated damages provision would trigger in the event that Plaintiff's  
10 employment was terminated without just cause. ECF No. 1-1 at 43. Without a  
11 final judgment finding Plaintiff was terminated without just cause, Plaintiff has no  
12 present entitlement to that money. *Pac. Mech. Corp. v. City of San Luis Obispo*,  
13 359 F. App'x 720, 721 (9th Cir. 2009). Therefore, Chun could not have interfered  
14 with this claimed property interest.

15 The Court finds it is evident from the Amended Complaint that Chun is  
16 entitled to immunity with regard to Plaintiff's due process claim. As with  
17 Plaintiff's free exercise claim, the Court is unable to conceive of additional facts  
18 that would deprive Chun of immunity. Fed. R. Civ. P. 15(a)(2); *Balistreri*, 901  
19 F.2d at 701. Accordingly, amendment of this claim would be futile, would  
20

1 prejudice Defendants, and would cause undue delay. *Corinthian Colls.*, 655 F.3d  
2 at 995.

#### 3 **D. Contract Claim (Count I)**

4 Plaintiff clarified at oral argument he is pursuing Count I only as to  
5 Defendant WSU. Defendant seeks dismissal of Plaintiff's claim for breach of  
6 contract and implied covenant of good faith and fair dealing on the grounds that  
7 WSU had just cause to terminate Plaintiff's employment. ECF No. 22 at 50.  
8 Plaintiff seems to argue WSU did not have just cause to terminate his employment  
9 because (1) his employment contract did not require him to receive the COVID-19  
10 vaccine, and (2) he had sincerely held religious beliefs that precluded him from  
11 receiving the vaccine and entitling him to a religious exemption; therefore, his  
12 employment could not be terminated for failing to comply with the Proclamation.  
13 ECF No. 28 at 17–22.

14 In Washington, “just cause” is defined as “a fair and honest cause or reason,  
15 regulated by good faith on the part of the party exercising the power.” *Baldwin v.*  
16 *Sisters of Providence in Washington, Inc.*, 112 Wash. 2d 127, 139 (1989). When  
17 an employee is discharged for “just cause,” the discharge may not be “arbitrary,  
18 capricious, or illegal” and must be based on facts that are supported by substantial  
19 evidence and are reasonably believed by the employer to be true. *Id.*

1 First, Plaintiff's argument that his employment contract did not require him  
2 to receive a COVID-19 vaccine is meritless. Plaintiff's contract required him to  
3 "abide by all provisions of law." ECF No. 1-1 at 36. The Proclamation imposed  
4 vaccination as an employment condition for all applicable state employees unless  
5 the employee received an exemption and accommodation. As such, Plaintiff was  
6 required to get vaccinated or apply for and receive an exemption and  
7 accommodation from his employer.

8 Turning to Plaintiff's second argument, WSU ultimately determined Plaintiff  
9 was not entitled to an exemption and accommodation. ECF No. 1-1 at 94, ¶ 90.  
10 The cited reasons included questions about Plaintiff's asserted religious beliefs that  
11 precluded him from obtaining a vaccine, particularly the timing of the assertions,  
12 and the imposition of an undue hardship on WSU if it were to accommodate  
13 Plaintiff's religious exemption. ECF No. 23 at 48. As previously discussed, the  
14 Court is unable to determine from the Amended Complaint and all incorporated  
15 materials that Plaintiff's accommodations would have imposed an undue hardship;  
16 a more complete evidentiary record is necessary for such a determination. If there  
17 is insufficient evidence to prove an undue hardship, Defendant's claimed just cause  
18 may not be "a fair and honest cause or reason, regulated by good faith." *Baldwin*,  
19 112 Wash. 2d at 139. Because Plaintiff's breach of contract claim rests on the  
20 determination of whether Plaintiff's exemption and accommodation would have

1 imposed an undue hardship, the Court determines Plaintiff's contract claim is also  
2 more appropriately resolved at summary judgment.

3 **ACCORDINGLY, IT IS HEREBY ORDERED:**

4 1. Defendant Inslee's Motion to Dismiss (ECF No. 21) is **GRANTED**. All  
5 claims asserted against Defendant Inslee are **DISMISSED with**  
6 **prejudice**.

7 2. The Clerk of Court is directed to **TERMINATE** Defendant Inslee from  
8 this action and adjust the docket sheet accordingly.

9 3. Defendants Chun and WSU's Motion to Dismiss (ECF No. 22) is  
10 **GRANTED in part and DENIED in part**. Counts III, VI, and VII  
11 asserted against all Defendants are **DISMISSED with prejudice**. Count  
12 V asserted against Defendant Chun is **DISMISSED with prejudice**.

13 4. The Clerk of Court is directed to **TERMINATE** Defendant Chun from  
14 this action and adjust the docket sheet accordingly.

15 5. Counts I, II, and IV asserted against Defendant WSU remain pending.

16 The District Court Executive is directed to enter this Order and furnish  
17 copies to counsel.

18 DATED May 30, 2023.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge